

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ARMANDO ANTONIO MARROQUIN,

Plaintiff,

vs.

OFFICER T. GRADY, et al.,

Defendants.

Case No: C 09-3841 SBA (pr)

**ORDER DENYING MOTION TO  
VACATE JUDGMENT**

Docket 41

Plaintiff previously brought the instant pro se action against various correctional officers and the Warden at Salinas Valley State Prison for deliberate indifference to safety and deliberate indifference to serious medical needs, pursuant to 42 U.S.C. § 1983. On September 28, 2012, the Court granted Defendants' motion for summary judgment as to Plaintiff's federal claims and declined to assert supplemental jurisdiction over his state law causes of action. Dkt. 39.

On October 25, 2012, Plaintiff filed a Motion to Vacate Judgment Civil Action under Federal Rule of Civil Procedure 59(e). Dkt. 41. The amendment or alteration of a judgment is permissible under Rule 59(e) if: (1) the district court is presented with newly-discovered evidence; (2) the district court committed clear error or made an initial decision that was manifestly unjust; or (3) there is an intervening change in controlling law. Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001). Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). A district court has "considerable discretion" in considering a Rule 59(e) motion. Turner v. Burlington N. Santa Fe R.R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003).

1 Plaintiff asserts that he has “newly discovered” evidence—i.e., two witnesses who  
2 allegedly will testify that he was in need of medical care and suffered pain. Mot. at 2. He  
3 further requests that the Court appoint an attorney to interview these witnesses. However,  
4 Plaintiff fails to articulate the specific testimony his proposed witnesses would offer or  
5 make any showing that they, in fact, are competent to provide information germane to any  
6 material issue of fact. Moreover, Plaintiff fails to make any showing why he could not  
7 have uncovered the identity of these witnesses earlier, particularly given that the underlying  
8 incident occurred in 2008. See Kona Enters., 229 F.3d at 890 (noting that a motion for  
9 reconsideration “may not be used to raise arguments or present evidence for the first time  
10 when they could reasonably have been raised earlier in the litigation.”).


11 Plaintiff also contends that the Court’s ruling was in error on the grounds that the  
12 Court improperly credited the declarations submitted by Defendants, since “prison staff can  
13 say anything they want in their declarations and reports.” Mot. at 2. However, in ruling on  
14 Defendants’ summary judgment motion, the Court only considered admissible evidence.  
15 See 9/28/12 Order at 10-11. In addition, Plaintiff has waived any objections to such  
16 evidence. Plaintiff’s ancillary contention that the Court did not consider the evidence he  
17 submitted with his opposition is belied by the Court’s Order, which clearly addresses his  
18 contentions. Accordingly,

19 IT IS HEREBY ORDERED THAT:

- 20 1. Plaintiff’s motion to vacate judgment is DENIED.
- 21 2. For the reasons stated above and the Court’s summary judgment order, the  
22 Court certifies that any appeal from the Court’s summary judgment decision would not be  
23 in good faith within the meaning of 28 U.S.C. § 1915(a)(3).
- 24 3. This Order terminates Docket 41.

25 IT IS SO ORDERED.

26 Dated: February 22, 2013

27   
28 SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 ARMANDO A. MARROQUIN et al,

5  
6 Plaintiff,

7 v.

8 MIKE EVANS et al,

9 Defendant.  
10 \_\_\_\_\_/

11 Case Number: CV09-03841 SBA

12 **CERTIFICATE OF SERVICE**

13  
14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
15 Court, Northern District of California.

16 That on February 25, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
17 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
18 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
19 located in the Clerk's office.

20 Armundo A. Marroquin T-86698  
21 L.P.C.C. N.A. 227  
22 5501 N. L Palma Rd.  
23 Eloy, AZ 85131

24 Dated: February 25, 2013

25 Richard W. Wieking, Clerk

26 By: Lisa Clark, Deputy Clerk

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